



## NATIONAL ASSOCIATION OF THE DEAF

814 THAYER AVENUE • SILVER SPRING, MARYLAND • 20910-4500

HEADQUARTERS: 301-587-1788 VOICE • 301-587-1789 TTY • 301-587-1791 FAX

BOOKSTORE: 301-587-6282 VOICE • 301-587-6283 TTY • 301-587-4873 FAX

July 20, 1998

Ms. Magalie R. Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: In the Matter of Telecommunications Relay Services  
and Speech-to-Speech for Individuals with Hearing and  
Speech Disabilities, CC Dkt. No. 98-67

Dear Ms. Salas:

Enclosed please find one original and six copies of comments filed by the National Association of the Deaf and the Consumer Action Network in the above captioned proceeding.

Sincerely,

Karen Peltz Strauss  
Legal Counsel for Telecommunications Policy

Enclosures

cc: Carmell Weathers, Network Services Division (paper and diskette)  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Telecommunications Relay Services, )  
the Americans with Disabilities Act of 1990, )  
and the Telecommunications Act of 1996 )

CC Docket No. 98-67

**COMMENTS OF  
THE NATIONAL ASSOCIATION OF THE DEAF AND  
THE CONSUMER ACTION NETWORK**

By Counsel:

Karen Peltz Strauss  
Legal Counsel for Telecommunications Policy  
National Association of the Deaf  
8 14 Thayer Avenue  
Silver Spring, MD 20910-4500  
(301) 587- 1788 Voice  
(301) 587-1789 TTY

July 20, 1998

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## SUMMARY

The National Association of the Deaf (NAD) wholeheartedly supports the proposals set forth by the Federal Communications Commission (FCC) to expand the definition of relay services beyond traditional TTY/voice services, to require **speech-to-speech** relay services, to improve the calculation of the speed-of-answer rules, to limit the transfer of **CAs** during calls, and to improve Commission oversight of certified relay programs.

The NAD is disappointed, however, that the FCC has rejected most of the concrete suggestions for improving relay service quality which consumers put before the Commission during its Notice of Inquiry in this proceeding. We renew our requests for such improvements, including our requests that the FCC mandate technically feasible new technologies, such as the call-release feature, two-line VCO and **VTT**, and Caller ID recognition. While we applaud the FCC's bold decision to include speech-to-speech services, we renew our request for a rule requiring the phase-in of video relay interpreting, a service that can bring about true **functional** equivalency for individuals who use American Sign Language as their primary mode of communication. Until such time that VRI is mandated, we also urge that the FCC's operational, technical, and functional standards apply to these services, as a condition for their cost recovery.

Some of the Commission's proposals do not appear to be new ones at all, and are already required under the Commission's own rules. For example, **CAs** are already required to "interpret" from ASL to English upon request, and to summarize recorded messages, where requested. A more significant means of achieving functional equivalency with respect to audiotext services, and one which we urge the FCC to adopt, would be to

allow a waiver of the charges incurred when repeat calls are needed to retrieve audiotext information over a relay call.

The NAD opposes the Commission's decision not to adopt any new CA requirements at this time. Telecommunications relay services in our nation are not new, and considerable improvements in CA quality are needed to bring these services up to the level of functional equivalency sought by both Congress and the FCC. Because the ability of a CA to accurately and **swiftly** complete a call determines the effectiveness of the call, we request that the FCC issue rules setting a minimum typing speed, requiring use of spelling/grammar correction software, mandating assessments of CA English language proficiency, and requiring training on new technologies and equipment needed to properly fulfill a state relay contract.

The single vendor relay model has been ineffective in providing quality relay services. In keeping with the goals of the Telecommunications Act of 1996, we urge the FCC to require the implementation of multivendoring at the state level. Title IV provides the FCC with sufficient authority to issue this mandate.

It is not clear that the purpose and intent behind Section 222 of the Telecommunications Act applies to the transfer of information contained in caller profiles. Even if this section does apply, the FCC can nevertheless direct the transfer of this information because it is necessary to initiate, render, bill and collect for TRS.

We support the Commission's recommendations with respect to the enforcement of TRS, but urge that, in addition, the Commission require (1) that information about local complaint procedures be compiled and posted on the FCC's web site by the FCC's Disabilities Issues Task Force, (2) that TRS providers and state commissions keep a log of

consumer complaints and resolutions, to be filed with the FCC, and (3) that the FCC set timelines on the internal handling of local TRS complaints.

The NAD opposes the Commission's tentative decision not to initiate the creation of a national TRS advisory committee. The pace at which improvements to TRS have come about has been slow and tedious. Moreover, it is clear, from the FCC's own decision to reject most of the consumer requests for quality enhancements, that more information about individual state relay programs needs to be shared across the country. Comparison of and coordination among state programs is needed to spread successes and eliminate frustrations among relay users. Finally, a committee is sorely needed to explore new and advanced technologies, such as enhanced protocols, V. 18, and speech-to-text services, technologies that could truly bring about **functionally** equivalent relay services.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

In the Matter of )  
 )  
Telecommunications Relay Services, )  
the Americans with Disabilities Act of 1990, ) CC Docket No. 90-571  
and the Telecommunications Act of 1996 )  
 )

**COMMENTS OF  
THE NATIONAL ASSOCIATION OF THE DEAF AND  
THE CONSUMER ACTION NETWORK**

**I. Introduction**

The National Association of the Deaf (NAD) and the Consumer Action Network (CAN) submit these comments in response to the Federal Communication Commission's (FCC's or Commission's) Notice of Proposed Rulemaking (NOI) in the above captioned proceeding. The NAD is the nation's largest organization safeguarding the accessibility and civil rights of 28 million deaf and hard of hearing Americans in education, employment, health care, and telecommunications. The NAD is a private, non-profit federation of 51 state association affiliates including the District of Columbia, organizational affiliates, and direct members. The NAD seeks to assure a comprehensive, coordinated system of services that is accessible to Americans who are deaf and hard of hearing, enabling them to achieve their maximum potential through increased independence, productivity, and integration. CAN is a coalition of national organizations of, by, and for deaf and hard of hearing people, that also seeks to protect and expand the rights of deaf

and hard of hearing persons in education, employment, telecommunications, technology, health care, and community life.<sup>1</sup>

The FCC's NPRM follows a Notice of Inquiry on telecommunications relay services (TRS) released by the Commission approximately one and a half years **ago**.<sup>2</sup> As the Commission notes, it received 49 comments and 34 reply comments in response to this initial Inquiry. NPRM

¶ 1. The vast majority of the parties commenting were consumers, who expressed extensive concerns about the quality of relay services in the United States, and put forth concrete suggestions for improving these services. Specifically, consumers maintained that the relay services being provided in America are inferior, and do not meet the functionally equivalent standard established by the FCC. Among other things, consumers blamed this situation on the fact that communications assistants often type too slowly, have poor diction, and make grammatical errors, on the inability to complete telephone calls driven by voice-based menu systems, on inconsistent blockage rates, on difficulties encountered when trying to complete conference and other specialized calls, and on insufficient provider outreach. Consumers requested the Commission to address each of these issues, and to go further, that is to examine - and if feasible, to require - new technologies that would vastly improve the quality of relay services, such as 2-line VCO, call release features, and protocol conversion services. Finally, consumers urged the FCC, as they had urged the Commission many times before, to create an

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<sup>1</sup> See Attachment A for a complete list of CAN membership organizations.

<sup>2</sup> Telecommunications Relay Services, the Americans with Disabilities Act of 1990, and the Telecommunications Act of 1996, *Notice of Inquiry*, CC Dkt. No. 90-571, 12 FCC **Rcd** 1152 (1997) (NOI).



advisory council for the purpose of creating an ongoing dialogue among TRS users, relay providers, state relay administrators, state public service commissions, and common carriers.

The Commission's NPRM takes several steps in the right direction. By expanding the concept of relay services beyond traditional TTY-to-voice and voice-to-TTY communications, the Commission takes a giant step away from the outdated model of telecommunications relay services, and offers new hope that relay services in the future may in fact be functionally equivalent to conventional phone services. Having shattered the original mold *in theory*, however, the Commission's new NPRM does little to improve upon this mold *in practice*. While we wholeheartedly support the Commission's tentative decisions to require speech-to-speech relay services, to revise the calculation of the speed-of-answer rules, to limit in-call replacement of communications assistants (CAs), and to improve Commission oversight of certified relay programs, the Commission's proposals barely skim the surface with respect to the changes needed to improve relay services. As will be shown below, we are very disappointed that the Commission rejected outright most of the suggestions raised by consumers to achieve functionally equivalency. We urge the Commission to reconsider our original recommendations, and stand ready to assist the Commission in devising ways to implement the very reasonable proposals we set forth herein.

## II. Coverage of Improved Relay Services

The FCC has tentatively concluded that speech-to-speech relay services and Video Relay Interpreting (VRI) will be classified as "improved" TRS. NPRM ¶ 15. We support the FCC's decision to expand the requirements of Title IV beyond TTY-to-speech and speech-to TTY services, and agree that Title IV of the ADA should apply to "any wire or radio communication

service that enables persons with hearing or speech disabilities to engage in communication with persons without such disabilities. . .” NPRM ¶14. The FCC’s proposal to permit recovery of the costs associated with providing these “improved” relay services recognizes the need to have relay services re-defined with the advent of new **technologies**.<sup>3</sup> We applaud this step as one that is critical to achieving the functional equivalency so desired by Congress through the passage of Title IV of the Americans with Disabilities Act (ADA).

A. Speech-to-Speech Relay Services

We strongly support the Commission’s proposal to require speech-to-speech relay services within 2 years. NPRM ¶23. We urge that such services be required to comply with whatever minimum standards that are otherwise required of relay services, including standards for blockage rates, CA qualifications, and call confidentiality. We defer to organizations with specific knowledge of speech disabilities with respect to an appropriate speed of answer standard for speech-to-speech services.

As the FCC notes, individuals with speech disabilities, by and large, have been denied access to the telephone network. The provision of this service finally will assist in bringing these individuals into the mainstream of this network. We are certain that the costs of providing this service will be far outweighed by the benefits to both the individuals who will be using the service and the benefits to our society at large, which can now enjoy the increased participation of these individuals.

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<sup>3</sup> We further support the FCC’s proposal to invest the TRS Fund Advisory Council with the authority to develop guidelines for the interstate cost recovery of improved TRS. Id. at ¶ 16.

### B. Video Relay Inter-meting

The FCC proposes defining VRI as a relay service, the costs of which would be recoverable from intrastate jurisdictions and the interstate TRS Fund. NPRM ¶ 15. However, the Commission has also tentatively concluded that VRI should not be mandated at this time. NPRM ¶32. We believe that it is a mistake for the FCC not to initiate the phase-in of VRI at this time.

As we noted in our reply comments on the NOI, parties commenting on the Commission's NO1 were in unanimous agreement about the significant benefits of VRI.<sup>4</sup> The Commission, too, has acknowledged that "[t]he majority of commenters addressing this issue agree that the potential benefits of VRI services for people with hearing disabilities, **especially** those who communicate primarily through sign language, are unquestionable." NPRM ¶29. Among other benefits, the FCC has recognized that VRI would provide telephone service for individuals who have not been able to use conventional relay services, such as children, individuals who primarily use American Sign Language (ASL), and adults who cannot type. In our earlier comments, we also explained that VRI more closely approximates direct telephone conversation, in that it allows the parties to a call to witness the expression of emotions, enables interruptions, permits individuals to use their first language (ASL), and facilitates the completion of calls that use voice driven menu systems. For deaf individuals who use American sign language as their primary mode of communication, this service will finally succeed in making relay services functionally equivalent to conventional telephone services. Indeed, even public service commissions and long

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<sup>4</sup> NO1 Reply Comments of NAD at 7, citing Comments of Southwestern Bell telephone Company (SWBT) at 5-6; GTE at 9-10; Kansas Relay Service, Inc. at 4; MCI at 4.

distance telephone providers have urged the Commission to phase in VRI because of its significant benefits to individuals with hearing **disabilities**.<sup>5</sup>

The Commission's decision not to mandate VRI at this time is based on its concerns (1) about the costs of this service and (2) about an inadequate supply of qualified interpreters to staff nationwide VRI at this time. NPRM ¶32.

In our reply comments, we acknowledged the fact that VRI is still in its early stages. In fact, it was precisely because this service is so new that we proposed its phase-in, rather than its immediate deployment nationwide. Nevertheless, without some type of mandate by the FCC to begin deploying this service, we are concerned that there will be significant delay in its adoption and integration across the country. A mandate will spur increased VRI services, which in turn will drive down the costs of these services, and will increase the pool of qualified interpreter **applicants**.<sup>6</sup>

There is little argument that some forms of VRI are presently technically **feasible**.<sup>7</sup> Texas has already conducted two VRI trials, and intends to require VRI in its next request for proposals.

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<sup>5</sup> For example, the Oregon PUC urged the FCC to issue rules that would provide incentives for VRI, NO1 Comments of Oregon PUC at 3, and MCI urged the Commission to make VRI a standard TRS offering, noting that this technology may reduce the demand for conventional TRS and assist in the provision of text-based communications. Comments of MCI at 5. Similarly, the Wisconsin TRS Advisory Council urged that VRI be "aggressively pursued so that deaf people who may be uncomfortable with written English can gain full access to the telecommunications network." NO1 Comments of Wisconsin Advisory Council at 5.

<sup>6</sup> As noted by MCI in its comments on the NOI, once the demand for qualified VRI interpreters increases, so too will the pool of available and qualified applicants increase. NO1 Comments of MCI at 6. The number of available interpreters similarly increased with the passage of interpreter requirements in the Rehabilitation Act and Titles I through III of the Americans with Disabilities Act. **See** NO1 Reply Comments of NAD at 8 n.5, citing MCI Comments.

<sup>7</sup> See Reply Comments of NAD at 7, citing Comments of Sprint on VRI; Ameritech at 2,8; SWBT at 4.

Maryland, too, will soon be initiating a trial of VRI. Moreover, North Carolina has required VRI as a permanent relay feature for the residents of its state since August of 1997. There, nine sites are used to provide VRI to the public Mondays through Fridays, ~~from~~ 8 a.m. to 5 p.m.

VRI technologies presently vary, with ISDN being used for centralized locations over digital networks, and analog transmissions offering possibilities for home use. At present, all VRI trials and services have been provided through local, centralized locations. However, at least one state – Texas – is now making available the technology needed for home use through its equipment distribution program. Of course, VRI will not be able to provide functionally equivalent telephone service until such time that is available from all locations. Technologies are rapidly improving to make this a reality in the not so distant **future**. We request that the FCC adopt a further notice of proposed rulemaking in this proceeding to learn more about these VRI technologies and their availability to consumers. It is our goal to have VRI initially required at local, regionalized sites and later for home use. This could take place over next few years, but is not likely to become a reality unless mandated by the FCC.

Although the FCC does not propose to require VRI at the present time, it notes its concerns about “protecting users of voluntarily-provided VRI services from the risk of communication errors caused by the use of unqualified interpreters. . .” **NPRM ¶34**. Toward that end, the Commission has proposed applying the definition of “qualified interpreter” as contained in the Department of Justice’s rules on Titles II and III of the ADA, to VRI. We strongly support application of this definition to the VRI context. Similarly, the FCC proposes that its rules on confidentiality, conversation content, and “type of call” should apply to the provision of VRI services. Id. We agree that these FCC standards are appropriate with respect

to the provision of VRI. We are confused, however, about the extent to which the FCC proposes to make these standards voluntary or mandatory. Specifically, in Paragraph 34 of the NPRM the Commission seems to propose applying these rules to VRI. But in Paragraph 17, the FCC states that “only services that are mandated by Commission regulation must comply with the Commission’s mandatory minimum [operational, technical and **functional**] standards,” and that “states that require TRS not mandated by the Commission, such as VRI, are **free** to specify performance standards for the services provided within their jurisdiction. . .” As noted above, we strongly urge that VRI become a mandated TRS service. In the interim period, where this service remains voluntary, recovery of the costs of providing this service should be contingent upon compliance with the FCC’s minimum operational, technical and functional standards, including standards relating to interpreter qualifications as well as standards on confidentiality, conversation content, and type of call. At no time should compliance with these and other performance standards be voluntary where VRI is provided.

Finally, we recommend a new standard to ensure high VRI quality. Where the transmission speeds of video vary, so too does the “legibility” of the video picture for the VRI user. In order for VRI to be truly effective, the FCC should require VRI that enables the user to **fully** understand the conversation relayed. This would require, at a minimum, 30 frames per second if ISDN or a faster technology is used, and 15 frames per second if analog (POTS)-based **VRI** is used. Again, a provider should not be permitted to recover costs unless this standard is met.

### C. Multilingual Relay Services and Translation Services

We strongly support the FCC's decision to define multilingual relay services (**MRS**) as a "relay" service, the costs of which will be recoverable from intrastate jurisdictions or the interstate TRS Fund. **NPRM ¶38**. However, we propose that such services be more broadly defined, to include not only same-language MRS, but, in limited situations, translation MRS. All too often, deaf children of foreign parents do not learn their parents' language. Translation relay services enables these deaf children (who typically know only ASL and English) to communicate with their hearing parents by telephone, where they otherwise would not be able to do so. Thus, although it may appear that this is a service that is above and beyond what is provided for hearing people, in actuality, it levels the playing field for these parents and their children. Although we support the Commission's decision to leave to the states the decision of whether to provide these and same-language relay services, we urge that *both* types of services (and not only same-language MRS) be reimbursable, where a state so chooses to provide them. See **NPRM ¶37**.

The FCC raises a third type of MRS, which it calls ASL translation services, and asks whether an exception should be made that allows these types of services to be reimbursable. We are confused by this proposal, as we understand that this is already a service that is both required by the FCC's own rules and which has been incorporated by relay providers across the country. Specifically, in its very first **NPRM** in this proceeding, the FCC noted the importance of ensuring that **CAs** (then referred to as operators) be "sufficiently trained to meet the specialized communications needs of individuals with hearing and speech impairments," and proposed that **CAs** be able to interpret typewritten American Sign Language and transliterate it to spoken

English and vice versa.”<sup>8</sup> Notwithstanding the difficulties inherent in “interpreting” ASL to English in a typed form, consumers overwhelmingly supported this proposal in comments to the FCC:

[An] exception to relaying calls verbatim concerns calls between deaf individuals who use American Sign Language (ASL) and hearing individuals who use English. Because ASL **differs** in grammar and syntax **from** English, parties communicating in each of these languages may have difficulty understanding one another without some interpretation between the two. We have already noted our support for the Commission’s proposal to require operator training in “TTY/ASL,” so that operators may perform this interpreting **function**. However, relay operators should be required to ascertain from the parties whether or not they wish to have their messages interpreted or relayed verbatim before actually performing an interpreting service.’

The Commission responded by requiring CAs to have “competent skills in . . . interpretation of typewritten ASL,”<sup>10</sup> and by creating a rule requiring that all conversations be relayed verbatim “*unless the relay user specifically requests summarization.*”<sup>11</sup>

### III. Access to Emergency Services

We share the Commission’s concerns about inconsistencies in the handling of emergency calls that are directed to TRS centers. For this reason, we strongly support the Commission’s proposal that TRS centers be required to pass a caller’s **ANI** to an emergency services operator,

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<sup>8</sup> In the Matter of Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals, and the Americans with Disabilities Act of 1990, Notice of Proposed Rulemaking, CC Dkt. No. 90-571, FCC 90-376 (November 16, 1990) (1990 NPRM) ¶ 11.

<sup>9</sup> Comments of the National Center for Law and the Deaf, et. al. (representing over 70 national and local organizations) on the FCC’s 1990 NPRM at 39.

<sup>10</sup> 47 C.F.R. §64.604(a)(1).

<sup>11</sup> 47 C.F.R. §64.604(a)(2) (emphasis added). Indeed, one relay provider routinely offers the option of including such translation services in caller profiles. Specifically, consumers have the option of requesting “translation services where [their] limited typed English messages are translated into conversational English and where spoken English is translated into limited typed English,” as well as the option of pre-specifying how their conversations are conveyed, including ‘ASL-to-English translations.’ MCI Relayer (Summer 1997).



where the relay call is an emergency. We recognize, however, that there may be difficulties in determining when an emergency call has come in, and are concerned about violations of the Commission's rules on **confidentiality**. An emergency call might be obvious where, for example, a caller begins a conversation with "Help! This is an emergency," or where a call is abruptly terminated and the caller had indicated the need for immediate assistance. In other situations, there may need to be a judgment made about whether the caller is actually in distress, and in need of emergency assistance. We would like to explore this issue further with the Commission and with emergency providers, to ensure that proper guidelines are in place for the referral of these calls.

#### IV. Access to Enhanced Services

In its discussion of audiotext services, the FCC quotes a legislative passage taken from the House Report on Title IV of the ADA which stated: "there are some services, such as audiotext services, that connect callers to recorded information services. It is not the function of this legislation to facilitate access to these kind of services."<sup>12</sup> Relying on this passage, the FCC concludes that its "jurisdiction under Title IV of the ADA does not permit [it] to mandate access to such services." NPRM ¶45.

The FCC did not read far enough into legislative history of Title IV.<sup>13</sup> After the above language was written, there was concern in Congress about how it would be interpreted, should

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<sup>12</sup> NPRM ¶42, citing H.R. Rep. No. 101-485 (IV), 101<sup>st</sup> Cong., 2d Sess. at 66 (1990).

<sup>13</sup> The FCC's unwillingness to require access to enhanced services is similarly reflected in its proceeding on Section 255 of the Telecommunications Act of 1996. In the Matter of Implementation of Section 255 of the Telecommunications Act of 1996, Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment by Persons with Disabilities, *Notice of Proposed Rulemaking*, FCC 98-55, WT Dkt. Footnote cont'd on next page

technological advances become available to make audiotext services accessible. It was agreed - *by the drafters of Title IV*- that the inclusion of the above language in the Report was only intended to preclude the relay of audiotext services to the extent that such a service was **not** technologically possible. A colloquy on the floor of the House explained the true intent of this language:

Congressman Hoyer: Mr. Chairman I am concerned about a provision contained in the report filed by the Committee on Energy and Commerce which states: "It is not the function of this legislation to facilitate access to audiotext services." Is it the gentleman's understanding that this bill precludes such access?

Congressman Luken: The gentleman raises a good question. While the legislation does not require access to audiotext services at this time, if **future** technology can make these services available utilizing a relay service, it is our intent to ensure such **access**.<sup>14</sup>

It is undeniable that the above colloquy provides the Commission with ample authority to require relay service providers to handle audiotext calls, where the completion of these calls is technically feasible. The Commission notes that the state of Texas already provides relay access to pay-per-call services. NPRM ¶44. Where access to these and other enhanced services has proven to be technically feasible, we maintain that the failure to require them violates the ADA requirement prohibiting "relay operators from failing to **fulfill** the obligations of common carriers by refusing calls . . .,"<sup>15</sup> as well as the Commission's own requirement that TRS be "capable of handling any type of call normally provided by common **carriers**."<sup>16</sup> Indeed, the Commission has always required that carriers bear the burden of proving the infeasibility of handling any type of

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No. 96-198 (April 20, 1998) ¶¶35-43. As these services continue to proliferate, deaf and hard of hearing consumers consistently have urged the FCC to address this issue, to no avail.

<sup>14</sup> 136 Cong. Rec. H2434 (May 17, 1990).

<sup>15</sup> 47 U.S.C. §225(d)(1)(E).

<sup>16</sup> 47 C.F.R. §64.604(a)(3).

call.<sup>17</sup> Insofar as at least some carriers are providing access to pay-per-call services, those that are failing to do so have an obligation *under the Commission's own rules* to explain why they are unable to complete these calls.<sup>18</sup>

As was true for **ASL/English** translation, we are confused about the Commission's proposed resolution for the handling of recorded messages, as the Commission again proposes what has been in effect since adoption of its TRS rules in 1991. Specifically, the Commission proposes to permit "an exemption" from its mandate that calls be relayed verbatim to permit summarization, in the event that **CAs** encounter an interactive recorded message. NPRM ¶46. Yet the Commission's rules already state that **CAs** "must relay all conversation verbatim unless the relay user specifically requests **summarization**."<sup>19</sup> Indeed, the FCC addressed this very issue in 1990, when in its NPRM on TRS, it explained that there might be times when summaries are necessary. Then the Commission explained that the Senate Report on Title IV had "**recognize[d]** that some recorded messages cannot necessarily be transcribed in full due to speed limitations in the dispatching TDD and the operator's typing ability," and proposed permitting "operators to summarize the content of recorded messages if reasonably necessary by message length or

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<sup>17</sup> For example, carriers who *alleged* that they were unable to handle coin sent-paid calls through the relay were required by the Commission to prove that they were, *in fact*, technically unable to provide this telecommunications service. In the Matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act, *Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking*, FCC 93-104, CC Dkt. 90-571 ¶10 (Feb. 25, 1993)

<sup>18</sup> It was also recently brought to our attention that relay providers in Wisconsin and New York are required to capture the **full** text of telephone recordings. If this is in fact the case, then the FCC should require all relay services to do the same.

<sup>19</sup> 47 C.F.R. 564.604 (a)(2).

content.”<sup>20</sup> Consumers responded to this proposal by agreeing that they should be given the option of directing **CAs** to summarize recorded messages, but cautioned that **CAs** not be allowed to decide by themselves whether or not to provide these summaries. Heeding these concerns, the Commission’s final rule directs **CAs** to wait until the “user specifically requests summarization,” before actually **summarizing** the recorded **message**.<sup>21</sup>

Employing a “hot key” to alert consumers as to the existence of a recorded message, as now proposed by the FCC, NPRM ¶46, is a good idea, and one that we support. However, we do not believe that the existence of such a key, or the willingness of a CA to summarize a recorded message will eliminate the need for all call-backs to a recorded message, especially if the called number requires interaction with the caller. Until such time that technology permits the complete interaction between a relay caller and the prompts to which that caller must respond, the charges for additional calls needed to retrieve audiotext information should be waived for the consumer. Relieving consumers of these added costs would offer a real improvement to TRS by bringing it a bit closer to the standard of functional equivalency.

## V. Mandatory Minimum Standards

### A. Speed of Answer

The FCC has proposed (1) to require TRS providers to answer 85% of all relay calls within “10 seconds *by a CA prepared to place the TRS call at that time*,” such requirement to be triggered when the call initially arrives at the TRS provider’s network, NPRM ¶50 (emphasis in

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<sup>20</sup> 1990NPRM at ¶17, referring to S. Rep. No. 116, 101<sup>st</sup> Cong. 1<sup>st</sup> Sess. 82 (1989).

<sup>21</sup> In the Matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities Act of 1990, *Report and Order and Request for Comments*, CC Dkt. No. 90-571, FCC 90-376, (July 26, 1991) (First Report and Order) ¶16.

original), and (2) to require that the calculation of the 85%-10 second rule be performed on at least a daily basis. Id.

Since the inception of relay systems, consumers have been dissatisfied with the rate at which their calls have been blocked, and the amount of time needed to answer those calls. We are hopeful that the Commission's proposals will resolve these concerns, but remain cautiously optimistic. Specifically, it has not been clear whether the excessive answer time has been due to the manner of calculating this rate, or the rate which is allowed under the FCC's rules itself. Thus, while we tentatively support the Commission's proposal to revise the manner in which this rate is calculated (and recognize that this is precisely what we had requested in our comments in the NOI), we request that the Commission review the appropriate speed of answer again in two years. By that time, new calculations will have hopefully adjusted the actual answer rate, and we will be able to determine whether a tighter standard is needed to achieve functional equivalency.

The Commission has further proposed excluding re-dialed or abandoned calls from the blockage rate calculation. Although, at present, we do not oppose excluding these types of calls, we do propose that separate records containing the number of such re-dialed or abandoned calls be maintained. Should an issue concerning speed of answer arise, these statistics would be available, and could shed light on problems inherent in accessing a particular relay provider.

#### **B. Communications Assistant Quality and Training**

The FCC acknowledges concerns that the quality of services provided by communications assistants (CAs) may, in many cases, be "substandard." NPRM ¶58. It is quite disappointing, then, that the Commission has concluded that a federally imposed minimum typing speed is not appropriate at this time. Id. Even more surprising – and quite frustrating – is the Commission's

decision not to adopt *any* new CA requirements at this time, despite widespread dissatisfaction with CA performance across the nation. The Commission purports that this tentative decision is based on the fact that “TRS is still a relatively new service,” and that “comprehensive Commission intervention in all areas of CA standards may overburden TRS providers and stifle competitive incentives for TRS providers to develop and improve their service to increase their attractiveness to consumers and state administrators.” NPRM ¶60.

TRS is not a new service. State certified programs have been providing relay services for a full five years, a majority of states had relay programs in effect one or two years before that time, and the first relay service programs began over ten years ago.<sup>22</sup> Both states and common carriers have been given substantial leeway in establishing these programs over the years. But consumers are dissatisfied and disappointed with their results. Some deaf consumers report that they choose not to use relay services at all, relying on Email and faxes to communicate, simply because of ongoing frustrations with relay service quality. It is without a doubt that complaints about relay quality, more often or not, stem from poor CA quality. Thus, it is imperative that the FCC address – and take actions to improve – CA quality in this proceeding.<sup>23</sup>

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<sup>22</sup> The first 24 hour/7 day a week state-mandated relay system began in California in 1987. By the time that the ADA was introduced in the 101<sup>st</sup> Congress, sixteen additional states had relay systems in operations. These states were Alabama, Arizona, Arkansas, Connecticut, Hawaii, Kansas, Massachusetts, Minnesota, New Hampshire, New York, Oklahoma, Oregon, Utah, Vermont, Virginia, and Wisconsin. National Center for Law and the Deaf, Summary of State Dual Party Relay Services (July 1989)

<sup>23</sup> It is true that competition has taken place in the realm of relay services. Relay service provider turnover has been constant throughout the various states. But there is real question as to whether an effort to improve relay quality or more likely an effort to reduce costs have been guiding states in their choice of relay providers. Experience has shown that it is more likely the latter that has driven competition among these providers.

When the Commission issued its First Report and Order on TRS in 1991, it rejected requests – by over 70 consumer national and local organizations – for a federal rule mandating a minimum CA typing speed. At that time, the Commission explained, “[r]ather than articulate a low threshold of expectations, a safe harbor, we instead expect that TRS providers will deliver the excellent level of service all telephone consumers **demand**.”<sup>24</sup> Put simply, “the excellent service” which the FCC optimistically predicted would occur, has not been provided. As the NAD and many others noted in comments to the FCC’s NOI in this proceeding, many CAs type quite slowly, and a minimum typing speed is critically needed to achieve the FCC’s **functionally** equivalent **standard**.<sup>25</sup> For the present, we urge that the minimum typing speed be set at the highest speed currently required by any of the 50 state certified relay programs.

Relay services are on the cusp of new technologies that promise to bring about the transmission of relay conversations in real time. Given the impending arrival of these new technologies, we request that the FCC re-evaluate its minimum standard in 2 years, at which time the Commission can assess the extent to which enhanced protocols and enhanced computer software (e.g., speech-to-text) should be incorporated into the provision of TRS. Finally, we renew our request that typing tests be oral, rather than text-to-type, in order to more accurately test relay performance and spelling skills.

It is critical for the FCC to understand that as long as relay services rely on human beings to perform the relay function, the speed at which CAs are able to accurately and effectively type will be directly linked to the extent to which a relay provider can offer **functionally** equivalent

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<sup>24</sup> First Report and Order ¶ 9.

<sup>25</sup> NOI Comments of NAD at 6.

relay services. The ability of a CA to accurately, effectively, and swiftly complete a relay call determines the extent to which relay services are meeting the needs of the community. At present, these needs are not being met in most parts of the country.

In our comments on the **NOI**, we also noted that spelling and grammatical errors are rampant among **CAs**. We noted that some relay centers have begun using software that automatically corrects common spelling and grammatical mistakes. We urged that the FCC issue a federal mandate for such **software**, and re-submit that request at this time. While such software will not eliminate all CA errors, it can reduce the frequency of these mistakes, which will result in a smoother and more accurate conversational flow.

Along these lines, we also urge the FCC to require state programs to assess CA proficiency in the English language. Unfortunately, it is not uncommon for **CAs** to be unfamiliar with commonly used English vocabulary. Mandating English language proficiency would help to **eliminate** spelling and grammar errors, and may alleviate problems that now exist with respect to the proper enunciation of words. Poor articulation is not only a function of poor speech or heavy accents; it also occurs when **CAs** are unfamiliar with the vocabulary used by individuals using the relay.

Finally, the comments submitted by the NAD on the **NOI** requested that **CAs** be required to have training in new technologies and equipment offered by a state's relay provider. Often, a relay provider will win a contract based, in part, on promises of providing certain types of calls, such as conference calling or two-line VCO. **After** the contract is secured, the provider fails to train its **CAs** on how to effectively handle these calls. The FCC should make clear in its rules that



CAs must be provided with the training necessary to handle calls that require special equipment, **software**, or procedures guaranteed in state relay contracts.

In 1991, the Commission explained its reasons for rejecting many of our earlier requests for specific CA standards:

We intend to monitor closely, through the complaint process and otherwise, the actual quality of relay services. If experience shows that imposition of additional minimum standards is required, we will not hesitate to prescribe such **standards**.<sup>26</sup>

Over a year ago, consumers came before the FCC and, complaining of relay quality, urged the imposition of additional minimum standards to achieve **functional** equivalency.

Notwithstanding its promise in 1991 to prescribe new standards if needed, the FCC has now turned its back on these requests. We ask the Commission not to complete the final order in this proceeding without truly redressing the inadequacies of our nation's relay systems.

#### VI. In Call Replacement of CAs.

We strongly support the Commission's proposal that CAs stay on a call for at least ten minutes before an in-call CA transfer may occur. NPRM ¶62. Because most relay calls last approximately seven minutes, this should not pose a problem for the majority of TRS calls. At the same time, this rule will eliminate much of the disruption that currently takes place when CAs change mid-call.

We urge the Commission to establish a rule allowing the TRS user to request a specific CA gender during a call transfer. So long as another CA of that gender is available, there is no reason to **refuse** such a request, which, if granted, will again permit more of a seamless **flow** in the conversation. Only where there is no CA available of that gender should the request be denied.

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<sup>26</sup> First Report and Order ¶9 n.8.